Choy was the result of insufficiently full description or inaccurate recollection. The evidence was given at a period of many months after the occurrence and it does not seem necessary to regard the discrepancy, if it be a discrepancy, with grave suspicion. So far as the driver is concerned, it seems clear that he did not in the first place offer the bribe. If Yap Choy is correct, he did not offer it either. In any event, if he did suggest before approaching the Sergeant that a bribe would have to be paid, this would be a very natural result of his experience with the Sergeant in connection with the first car, and would not necessarily mean that the corruption or intended corruption flowed initially from him. If it is notorious that a particular public servant is habitually corrupt, and that bribes must be paid to make him do his obvious duty, it is not necessarily active corruption to offer him a bribe. The learned trial Judge found as a fact that in the circumstances of this case it was in both instances the Sergeant who demanded the bribe and not the drivers or Yap Choy who offered it. The evidence fully entitled the learned Chief Justice to make such a finding, and there is no reason to disturb it. It was a finding which was necessary to his decision on the question whether Yap Choy and the two drivers were within the provisions of section 13(3) of the Prevention of Corruption Ordinance, No. 5 of 1950. The principal ground of appeal is that they were not within that sub-section and that the learned Chief Justice misdirected himself in holding that they were.

Counsel for the appellant took the somewhat bold course of asking this Court to say that sub-section (3), on a true construction, is really meaningless in that it does not speak of "improper payment" but merely of "payment". As the mere making of a payment with no knowledge of its impropriety could not possibly impose the disabilities of an accomplice, the sub-section would in that event have no effect in altering the existing law relating to corroboration of an accomplice's evidence. However attractive such an argument might at one time have appeared, it is not open to consideration in this Court now by reason of the decision in the case of *Daimon bin Banda v. Public Prosecutor*[1]. In that case, the Court of Appeal construed section 13(3) of the Ordinance and held that its effect was that in corruption cases "a person is no longer to be presumed unworthy of credit merely by reason of the fact that he has made, or caused to have made, an improper payment. If, however, he has taken some more infamous part in the transaction, for example, actively corrupted a public officer into accepting the bribe, the new provision does not cover his testimony". It would not be open to this Court to depart from that decision even if it desired to do so, nor does it appear necessary in any way to explain, limit or comment on it. The section now bears that meaning for all purposes in this country, and no argument to the contrary can be accepted. Conscious payment of a bribe must always make the payer an accomplice, but the degrees of guilt attaching to such payment could be taken into account even before the section was passed. The question now relevant is whether or not the payer actively corrupted the public officer into accepting the bribe, or otherwise took a part in the transaction more infamous than arises from the payment of a bribe alone. The legislature has seen fit to say in effect that, unless that greater degree of culpability exists, convictions may properly be based on the evidence of an accomplice alone. It would be wrong for the Court to try to maintain the old restrictive rules with regard to corroboration in the face of such authority, though a Court must still scrutinize credibility with all the usual care. The learned Chief Justice was in no doubt that the witnesses here were accomplices in the normal sense and examined their evidence with all the care appropriate to their position as such. Unless he misdirected himself as to their being within the sub-section, there is nothing in his findings with which an appellate Court should interfere.

In this case the evidence read in its normal sense clearly indicated that the Police Sergeant took the initiative by demanding the bribes, and it was not the witnesses who, in the first place, offered them. That being so, it seems impossible to say that they were guilty of actively corrupting him, and there are no special circumstances which would bring them within the words "some more infamous part" in *Daimon's* case. I consider that there was no misdirection, and that there was evidence to support the findings of the learned Chief Justice. In my opinion the appeal should be dismissed.

Appeal dismissed.

S. R. M. M. ANNAMALAI CHETTIAR v. LASSAM BINTI VEERAMANAWI.

[C. A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S.) and Wilson, J.) December 3, 1952]

[K.L. — Civil Appeal No. 50 of 1952]

Agency — Power of attorney — Extent of power of delegation.

This is an appeal from the judgment of Buhagiar, J. reported in (1952) M.L.J. 226. The facts are set out fully in that judgment. Briefly, the donee of a Power of Attorney had delegated his Power to another who in turn had delegated it to a 3rd donee. The question is whether the donor conferred the Power to substitute.

Held: (1) on construing the relevant clause as a whole a power to substitute was conferred on the first donee; (2) in any event, the donor must be taken be have ratified the appointment of the 3rd donee after nearly two years without intervention.

COURT OF APPEAL.

B. J. P. Joaquim and *M. N. Coomarasami* for the appellant.

F. J. Woodward for the respondent.

Cur. Adv. Vult.

Mathew, C.J. : — This case was fully argued before the trial judge, and no points have been raised on the appeal which would cause me to disagree with the full and carefully reasoned judgment of the trial judge.

There are only two points which need consideration :—

(1) Did the plaintiff, in the power of attorney that he granted to Subramaniam Chettiar in 1937, confer the power to substitute.

(2) Did the plaintiff ratify the acts of S.R.M.M. Kasi, which he purported to perform under a power of attorney granted to him by one S.R.M.M. Periakaruppan Chettiar, who had been appointed substituted attorney by Subramaniam Chettiar.

The relevant clause in the power of attorney granted to Subramaniam Chettiar reads as follows :—

"To concur in doing any of the acts and things herein contained with any person or persons interested in the premises.

Generally to do and perform all such acts deeds matters and things in relation to the premises as my said attorney may deem expedient as fully and effectually as I could were I personally present. And likewise to appoint one or more attorney or attorneys under him with the same or more limited powers and such attorney or attorneys to set aside or substitute and such power or powers to revoke at pleasure.

And I do hereby agree to ratify allow and confirm all and singular whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done within the premises by virtue of these presents."

The last sentence of the second paragraph is difficult to understand, and follows no accepted form; but reading the clause as a whole, I am left in no doubt that it was the intention of the plaintiff to give Subramaniam Chettiar power to substitute, and that the clause in effect gives such a power. This being so, it follows that effective powers were given to Subramaniam Chettiar and by him to Periakaruppan Chettiar.

On the second point I agree with the reasons given and the conclusions arrived at by the trial judge.

I would dismiss this appeal with costs, and order that the deposit be paid out to the respondent against her taxed costs.

Sir Charles Murray-Aynsley, C.J., (S.) : — In this case the facts have been set out in the judgment appealed against and I do not think it necessary to repeat them.

It is necessary to consider, in the first place, whether the original power of attorney created a power of substitution of such a character that the substitute could himself substitute another attorney. If the first power of attorney does this, I do not think that there is any doubt that the second power of attorney does confer such power, though, of course, it is not effective unless the power is conferred by the first.

The power of attorney is badly drafted. It should be noted that the attorney of the attorney is given in the relevant clause (No. 19) power to substitute and later on the donor agrees to ratify anything done by the attorney or his substitute. It should also be noted that the donor appears to have been satisfied with the substitution effected by the attorney, because, even after the death of the original attorney, he took no steps to regularise the position, as he could have done, by giving a fresh power of attorney. Taking clause 19 as a whole, I consider that there is a power to substitute and not merely to delegate. In any event, if I am wrong on this point, I think that the donor, who allowed Kasi to continue for nearly two years in the office of agent, although he was aware of the defect, if any, in the appointment of the latter, must be taken to have ratified the appointment by Periyakaruppan of Kasi.

For these reasons I would dismiss the appeal and have nothing more to add to the careful and lucid judgment of the Judge who tried the case.

Wilson, J. : — In March, 1937, the plaintiff gave a power of attorney to Subramaniam Chettiar in which it is stated *inter alia* :—

"And likewise to appoint one or more attorney or attorneys under him with the same or more limited powers and such attorney or attorneys to set aside or substitute and such power or powers to revoke at pleasure."

In 1939 Subramaniam Chettiar gave what may be described as a full power of attorney to S. R. M. M. Periakaruppan Chettiar. It has been argued that the first power of attorney did not authorise Subramaniam Chettiar to substitute another attorney in his place. It is to be observed that the wording quoted above in the first power of attorney does not make sense and if the matter remained there I should be inclined to hold that the first power of attorney only gave Subramaniam Chettiar authority to appoint agents to act under him and did not give him the power to appoint a substitute under a power of attorney. However, clause 19 of the first power of attorney continues as follows :—

"And I do hereby agree to ratify, allow and confirm all and singular whatsoever my said attorney or his substitute or substitutes shall lawfully do or cause to be done within the premises by virtue of these presents."

These words appear to me to make it perfectly clear that the intention of the plaintiff was to authorise Subramaniam Chettiar to appoint a substitute with full powers to act on behalf of the plaintiff and not merely to appoint agents to act under Subramaniam Chettiar. If that be so, I do not think there can be any doubt that Subramaniam Chettiar had the power to appoint by way of power of attorney Periakaruppan as his substitute which he in fact did and that Periakaruppan Chettiar had the power to appoint by way of power of attorney a substitute which he in fact did in a third power of attorney in favour of one S. R. M. M. Kasi.

In these circumstances, I am of opinion that the appeal should be dismissed with costs. But I would add that in my opinion the plaintiff, having allowed Kasi to act for him for nearly two years after the Japanese occupation ceased, must be held to have ratified the acts of Kasi. The reasons given for allowing Kasi to continue to act for him during this period without intervention did not impress me. In my opinion it was only when the plaintiff wished to repudiate the acts of Kasi that he began to look around to find some argument on which to base the allegation that Kasi had not any authority to do what he had done on behalf of the plaintiff.

Appeal dismissed.

YONG NYAT YU & ANOR. v. LEE KEE.

[C. A. (Mathew, C.J., Sir Charles Murray-Aynsley, C.J. (S.) and Briggs, J.) December 20, 1952]

[K.L. — F.M. Civil Appeal No. 61 of 1952]

Landlord and tenant — Possession — Arrears of rent — Whether deposit as rent in advance affects arrears on due date.

This is an appeal from the decision of Wilson, J. reported in (1952) M.L.J. 231, dismissing an appeal from the Magistrate's Court. The respondent had paid 2 months rent in advance to be refunded at the end of the tenancy. The rent fell into arrears for 2 months and the appellant claimed possession on the ground that rent had been in arrears for more than 14 days. At this appeal it was argued that the deposit of 2 months rent in advance was not repayable until the end of the tenancy, and could not therefore be set off against the rent in arrears.

Held: the advance payment is rent, and rent is only due during the currency of a tenancy. The taking of a deposit repayable at the end of the tenancy is contrary to section 4(1) of the Control of Rent Ordinance, 1948. The advance of rent must be accounted for in assessing arrears of rent.

COURT OF APPEAL.

A. J. Bostock Hill for the appellants.

F. G. Charlesworth for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by :—

Mathew, C.J. : —The respondent in this appeal is the tenant of certain premises owned by the appellants. When the appellants acquired the premises in January 1951, the respondent was already a tenant, and at the request of the appellants paid 2 months rent in advance, to be refunded at the end of the tenancy. The receipt for this amount read :—

"Received from Chop/Mr. Lee Kee for No. 92 A Tong Shin Lane of this town a deposit of two months, the said rent amounting to a total of $87.50 only. This is the proof.

Recipient (?) Signature.

Receipt issued this 16th day of February, 1951."

Thereafter the respondent paid his rent monthly with regularity, but fell into arrears for the months of May and June 1951.

On the 16th July 1951 the appellants informed the respondent through their Solicitors that he was more than 14 days in arrear with his rent, and gave notice to vacate the premises. The respondent did not vacate the premises, and on 11th October 1951 the appellants filed a claim in the Magistrate's Court claiming vacant possession and arrears of rent and mesne profits. The Magistrate held that the 2 months rent in advance should first be accounted for by the appellants and on that basis the rent for May and June was not in arrears. On appeal to the High Court the judgment of the trial magistrate was upheld.

Mr. Bostock Hill, for the appellants, argued before us that the deposit of 2 months rent in advance was not repayable until the end of the tenancy, and could not therefore be set off against rent in arrear. The relevant part of section 4(1) of the Control of Rent Ordinance, 1948 reads :—

"No person shall, as a condition of the grant, renewal, continuance, sale or assignment of a tenancy of any premises or as a condition for sub-leasing or sub-letting any premises require the payment of any premium or other like sum or the giving of any valuable consideration in addition to the rent, or receive such payment or consideration, and no person shall offer or make any such payment or offer to give such consideration:

Provided that it shall not be unlawful for a landlord to receive, and for a tenant to pay, in advance, rent not exceeding three months rent.

Provided further that a landlord may, with the permission of the Board, recover a reasonable sum in respect of dilapidations on the renewal of a lease."

The clear meaning of the proviso is that the landlord may receive rent in advance not exceeding three months rent.